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MAY 17 2011

TOWN CLERK, ACTON

## **TRI-PARTY AGREEMENT OLD HIGH SCHOOL COMMONS**

Town School Limited Partnership, of 167 Dutton Street, Lowell, Massachusetts, hereinafter called the "Developer," for itself, its successors and assigns, hereby covenants and agrees with the Town of Acton Zoning Board of Appeals, hereinafter called the "Board", with respect to the Comprehensive Permit for the Old High School Commons Project (the "Project") located on 3 Charter Road, Acton, Massachusetts (the "Site"), as approved by the Board on October 21, 2008 and subsequently recorded at the Middlesex South Registry of Deeds (the "Registry") at Book 56290, Page 532, as amended by a Modification dated June 9, 2009 recorded with the Registry in Book 56462, Page 150 and as further amended by a Modification dated January 10, 2011 recorded with the Registry in Book 56290, Page 555 (the "Permit"), and as further shown on plans entitled "Old High School Commons, Acton, Massachusetts, Common Ground Development Corp.", dated May 28, 2008, last revised September 8, 2008, designed by Richard Westcott, P.E. of Wescott Site Services, scale 1" = 20', (the "Plan"), a copy of which is on file with the Board, that the Developer, will, prior to the second (2<sup>nd</sup>) anniversary of the date of this Tri-Party Agreement:

Complete the construction of the Project in accordance with the Permit and the Plan, including the specifications on file with the Board and the Town of Acton.

The Developer has executed, acknowledged and delivered to Enterprise Bank and Trust (the "Bank"), a mortgage upon said Project, as security for its Promissory Note payable to the order of the Bank in the aggregate principal sum of \$2,400,000.00.

Pursuant to the Developer's obligations under Condition H.1 of the Permit relative to a performance guaranty to secure the Site if the Developer abandons the Project, the Bank, for itself and its successors and assigns, hereby covenants and agrees with the Board, that it retains on this date as undisbursed mortgage funds otherwise due to the Developer, not less than \$30,000.00 to secure the Developer's covenants and agreements set forth herein. The Bank further covenants and agrees that it will advance to the Developer only such part or all of the said retained and undisbursed mortgage funds as the Board shall, from time to time, certify to said Bank in writing as released from the security hereby provided; and, further covenants and agrees that in the event that neither the Developer nor the Bank completes performance of the Developer's obligations hereunder by the second (2<sup>nd</sup>) anniversary of the date of this Tri-Party Agreement, the Bank shall pay to the Board, upon demand by the Board, the balance of such

retained undisbursed mortgage funds remaining and not released to the Board pursuant to this Tri-Party Agreement to be applied by the Board for completion of the Project or to secure the Site, in the Board's discretion. If the Bank has foreclosed on the Project and is the record owner of the Project, the Bank, upon prior written notice to the Board, shall be entitled to see to the application of such funds for such completion of the Project or to secure the Site, which shall be completed within a reasonable time from the date of such payment.

By acceptance of the Developer's covenants and agreements contained herein, and of the covenants and agreements made by the Bank set forth herein, the Board hereby covenants and agrees that upon satisfactory completion of the Project as defined in the Permit to be completed by the Developer, and upon the written request of the Developer and verification by the Board that the Project has been completed in accordance with the Plan and details and specifications on file with the Board and the Town of Acton, and in accordance with the Permit, the Board shall in writing authorize the Bank and release to the Developer the retained and undisbursed funds.

This Tri-Party Agreement may be executed in multiple original counterparts.

[Signatures to follow on next page.]

EXECUTED AS A SEALED INSTRUMENT, by the duly authorized officer(s) of the respective parties hereto, this \_\_\_\_ day of \_\_\_\_\_, 2011.

**TOWNE SCHOOL LIMITED PARTNERSHIP**

By: Towne School GP, LLC, its general partner

By: Common Ground Development Corporation,  
its managing member

By:  
Name:  
Title:

Enterprise Bank and Trust

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

MIDDLESEX, ss

\_\_\_\_\_, 2011

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was one of the following (check applicable box): ☐ a driver's license; ☐ a valid passport; ☐ personally known to be the person whose name is signed on the preceding or attached document; or ☐ other \_\_\_\_\_, and acknowledged to me that he/she signed it voluntarily for its stated purpose as \_\_\_\_\_ of Common Ground Development corporation, the managing member of Towne School GP, LLC, the general partner of Towne School Limited Partnership.

\_\_\_\_\_  
Notary Public

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

\_\_\_\_\_, 2011

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was one of the following (check applicable box): ☐ a driver's license; ☐ a valid passport; ☐ personally known to be the person whose name is signed on the preceding or attached document; or ☐ other \_\_\_\_\_, and acknowledged to me that he/she signed it voluntarily for its stated purpose as duly authorized \_\_\_\_\_ of Enterprise Bank and Trust.

\_\_\_\_\_  
Notary Public

My commission expires:

TOWN OF ACTON ZONING BOARD OF APPEALS

By: Roland Bartl  
Roland Bartl, Planning Director

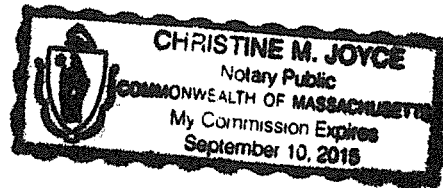
COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

5/16/, 2011

On this 16 day of May, 2011, before me, the undersigned notary public, personally appeared Roland Bartl, proved to me through satisfactory evidence of identification, which was one of the following (check applicable box): ☐ a driver's license; ☐ a valid passport; ☐ personally known to be the person whose name is signed on the preceding or attached document; or ☐ other known to me, and acknowledged to me that he signed it voluntarily for its stated purpose as Planning Director for the Town of Acton, a municipal corporation.

Christine M. Joyce  
Notary Public  
My commission expires:



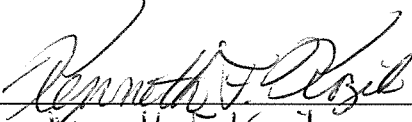
**RELEASE**

The undersigned, being the duly authorized chairman of the Zoning Board of the Town of Acton, Massachusetts, in consideration of the execution and delivery of that certain Tri-Party Agreement dated May 16, 2011 among Towne School Limited Partnership, Enterprise Bank and Trust and the Town of Acton Zoning Board of Appeals, hereby certifies:

That the requirements for the construction of the project (the "Project") called for by the "Old High School Commons Comprehensive Permit Decision" dated October 21, 2008 and recorded at the Middlesex South Registry of Deeds (the "Registry") in Book 56290, Page 532, as amended by a Modification dated June 9, 2009 recorded with the Registry in Book 56462, Page 150, and as further amended by a Modification dated January 10, 2011 recorded with the Registry in Book 56290, Page 555 (as amended, the "Permit") is hereby released from Condition H.1 of the Permit relative to a performance guaranty to secure the site known as 3 Charter Road, Acton, Massachusetts, if the applicant under the Permit abandons the Project.

Date: 5/16/ 2011

**TOWN OF ACTON  
ZONING BOARD OF APPEALS**

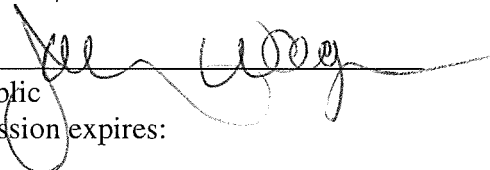
By:   
Name: Kenneth F. Kozik

Its: Chairman, Duly authorized by the Zoning Board of Appeals

**COMMONWEALTH OF MASSACHUSETTS**

MIDDLESEX County, ss.

On this 16<sup>TH</sup> day of MAY, 2011, before me, the undersigned notary public, personally appeared KENNETH F. KOZIK, the Chairman of the Acton Zoning Board of Appeals, proved to me through satisfactory evidence of identification, which was [a current driver's license] [a current U.S. passport] [my personal knowledge], to be the person whose name is signed on the preceding instrument and acknowledged the foregoing instrument to be his or her free act and deed as the Chairman of the Zoning Board of Appeals.

  
Notary Public  
My commission expires: